

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
JOHN AND RITA BIELINSKI	:	DETERMINATION
	:	DTA NO. 817724
for Redetermination of a Deficiency or for Refund of	:	
Personal Income Tax under Article 22 of the Tax Law for	:	
the Year 1996.	:	

Petitioners, John and Rita Bielinski, P.O. Box 147, Allegany, New York 14706, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1996.

A hearing was held before Jean Corigliano, Administrative Law Judge, at the offices of the Division of Tax Appeals, 77 Broadway, Suite 112, Buffalo, New York, on April 17, 2001 at 10:30 A.M., with briefs and additional evidence to be submitted no later than July 20, 2001, which date began the six-month period for the issuance of this determination. Petitioners were represented by Mrs. Rita Bielinski. The Division of Taxation appeared by Barbara G. Billet, Esq. (Andrew S. Haber, Esq., of counsel).

ISSUES

I. Whether the petition may be treated as an informal claim for refund, and if so, whether the Division of Tax Appeals has jurisdiction to consider the refund claim.

II. Whether petitioners have substantiated certain deductions from income for real estate taxes, mortgage interest, medical expenses, contributions, casualty losses and miscellaneous expenses.

FINDINGS OF FACT

1. Petitioners, John and Rita Bielinski, filed a timely joint New York State personal income tax return for 1996. The return was filed electronically. The preparer of the return is shown as Rose Mary Cooley.

2. On their return, petitioners claimed a refund of New York State personal income tax of \$2,394.00 computed as follows:

New York adjusted gross income	\$70,248.00
Federal itemized deductions	(53,723.00)
New York exemptions	(3,000.00)
New York income	\$13,525.00
New York tax on income	566.00
New York tax withheld	2,960.00
Refund claimed	\$2,394.00

3. The refund was paid, but petitioners' 1996 return was audited by the Division of Taxation ("Division"). Because petitioners were unable to substantiate their Federal itemized deductions, the Division recalculated petitioners' 1996 tax liability. The Division of Taxation issued to petitioners a 1996 Statement of Proposed Audit Changes, dated August 11, 1997. It contains the following explanation of the Division's audit changes and of its imposition of interest and penalties:

The itemized deductions which were verified with documentation are less than the allowable standard deduction. Therefore, you have been allowed the standard deduction.

Your prepayments have been reduced by the refund issued on your original return.

A negligence penalty of 5% is imposed as an addition to tax under section 685(b)(1) of the New York State Tax Law.

In addition to the 5% negligence penalty, an amount equal to 50% of any interest due on a deficiency or portion of a deficiency attributable to negligence or

intentional disregard of the Tax Law has been imposed. (section 685(b)(2) of the New York State Tax Law).

Interest is due on the underpayment of tax from the due date of the return to the date the tax is paid in full. Interest is required under section 684(a) of the New York State Tax Law.

4. The Statement of Proposed Audit Changes shows the following computation of New York State tax due for the year 1996 as determined by the Division.

Total New York income	\$70,248.00
New York Standard Deduction	(12,350.00)
Balance	57,898.00
Exemptions	(3,000.00)
 New York taxable income	 54,898.00
 Tax per taxpayer	 566.00
Tax per Division	3,389.00
Payments	2,960.00
Amount previously refunded	2,394.00
 Balance Due	 \$2,823.00

5. The Statement of Proposed Audit Changes asserts tax due for 1996 of \$2,823.00 plus interest of \$73.96 and penalties of \$178.13. Petitioners were informed that a Notice of Deficiency would be issued if they did not reply to the statement by September 10, 1997. Petitioners did not respond, and the Division issued to petitioners a Notice of Deficiency dated October 6, 1997 asserting tax due of \$2,823.00 plus penalty and interest (Assessment number L-013985256-3).

6. On January 29, 1998, the Division issued to petitioners a Notice and Demand for payment of the taxes asserted in the October 1997 Notice of Deficiency. The Division maintains computerized records of each contact (by mail, telephone, fax, etc.) between any individual taxpayer and the Division. These records show that several attempts were made to resolve the

outstanding assessment against petitioners. They were asked to provide documentation to substantiate their claimed deductions, and they provided some documents to the tax auditor. The auditor determined that this information was insufficient to warrant any change to the assessment.

7. On August 14, 1998, the Commissioner of Taxation and Finance filed a judgement against petitioners in Cattaraugus County in the amount of \$5,483.10.

8. On or about December 14, 1998, the Division issued a notice to petitioners stating that three assessments previously issued to petitioners, including the one in issue here, were sustained. As relevant, the notice states:

Additional information regarding the above assessments was requested by phone on November 29, 1998, and a 10-day response time was given.

Since you did not provide the canceled checks or other additional evidence to support the itemized deductions claimed for tax years 1994 - 1996, the above assessments are considered correct as issued and have been sustained.

9. The Division issued to Mrs. Bielinski a form letter, dated September 8, 1999, informing her of a pending income execution. It provided Mrs. Bielinski with an opportunity to satisfy the previously issued warrant by making full payment of the amount due. Alternatively, she was informed that she would receive an Income Execution Billing Notice every four weeks which was to be returned with payment for each payroll period. The notice warned that if Mrs. Bielinski failed to make payments pursuant to the monthly billing notices a copy of the Income Execution notice would be served on her employer, TRC/Potter Group, Inc. The Income Execution Notice states that payments of \$355.00 per week, beginning August 1999, would be required to satisfy unpaid taxes of \$3,653.74 and additional interest on that amount.

10. Apparently in response to the Notice of Income Execution, petitioners sent an undated letter addressed to: New York State / Tax Compliance Office / State Office Building / Albany / NY. The return address provided on the letter of income execution was Tax Compliance Division / P.O. Box 5149 / Albany, NY 12202-5149. It is not known whether the Tax Compliance Division received this letter. Petitioners' letter makes several claims that were repeated by Mrs. Bielinski in the course of her testimony at hearing. They may be summarized as follows:

- (a) that petitioners are confused and do not understand the basis for the Division's assessment;
- (b) that all information requested was mailed to the Division which later informed petitioners that the information had not been received;
- (c) that information was mailed a second time by certified mail and petitioners were again informed that the information had not been received;
- (d) that, after petitioners informed the auditor that they had a signed certified mail return receipt, petitioners were told that the information had been found;
- (e) that the auditor refused to accept copies of documents sent to verify claimed deductions and requested original documents;
- (f) that original documents were then sent, again by certified mail, and that petitioners never received a response to this submission.

11. On September 16, 1999, petitioners mailed a request for a conciliation conference to the Bureau of Conciliation and Mediation Services ("BCMS") in Albany. The letter described in Finding of Fact "10" was included with the request (and may have constituted the entire request).

12. On November 12, 1999, BCMS issued to petitioners a Conciliation Order Dismissing Request. It states that the request was dismissed because it was not mailed within 90 days of the issuance of the statutory notice which it addresses. The date of issuance of the statutory notice is said to be October 6, 1997.

13. On March 16, 2000, petitioners filed a petition with the Division of Tax Appeals. Where petitioners were asked to provide the type of tax and period or year being petitioned, they wrote in "don't really know." The space provided for insertion of the assessment or notice number was left blank. Petitioners checked a box next to the statement "redetermination of a deficiency/revision of a determination" and a second box indicating that the tax in question is personal income tax. They indicated that they had received a conciliation order but did not provide a copy. In the narrative section of the petition form, they stated: "Pls be advised that we were requested to send originals by auditor. Which we did. That was the last we heard. Then we get notice of judgment & garnishment. No letter no nothing in between." Attached to the petition was: the Notice of Income Execution and accompanying letter of information and petitioner's letter to the Division in response. The Division of Tax Appeals asked petitioners to submit a copy of the Conciliation Order Dismissing Request. They did so on May 30, 2000. A notation signed "R Bielinski" states: "Pls find enclosed letter you requested. I just rec'd. I never got a letter just a phone call from Conciliation Dept. telling me to contact Troy, NY." Petitioners submitted what appears to be an original copy of the Conciliation Order, dated November 12, 1999.

14. Between December 31, 1999 and April 4, 2000, payments were made on the original assessment, and the assessment was totally satisfied as of April 17, 2000. The Division filed an answer to the petition on July 20, 2000 acknowledging that petitioners had paid the subject

liability in full, but taking the position that no claim for refund had been filed and that the petition was not filed within the statute of limitations.

15. A hearing in the Division of Tax Appeals was scheduled for March 6, 2001 in Buffalo, New York. On February 2, 2001, the Division filed a motion for summary determination seeking dismissal of the petition on the ground that neither petitioners' request for a conciliation conference nor their petition for a hearing was filed within the statutory time limits for the filing of such requests.

16. By letter dated February 7, 2001, Assistant Chief Administrative Law Judge Daniel Ranalli informed the Division's attorney, Mr. Haber, that no order on the motion would be issued prior to the scheduled hearing and that the issues raised in the motion could be raised at hearing. Judge Ranalli also informed Mr. Haber that "once petitioners paid the liability, their petition was automatically converted to a claim for refund."

17. At the administrative hearing held on April 17, 2001, the Division renewed its motion for dismissal of the petition on the ground that the Division of Tax Appeals lacks jurisdiction over the subject matter of the petition. To support its motion, the Division submitted various documents to establish that both petitioners' request for a conciliation conference and their petition for a hearing were filed after the statutory time limit for filing such documents had expired.¹

18. The itemized Federal deductions claimed by petitioners on their 1996 return are as follows:

Total medical deduction: \$ 7,064.00

¹ Inasmuch as the petition is deemed to be a request for refund of the taxes paid (see, Conclusion of Law "A "), timeliness issues regarding the request for conference and the petition are deemed to be moot. Accordingly, the findings of fact do not include a lengthy recitation of the facts pertaining to the Division's motion.

State & Local taxes:	3,048.00
Real estate taxes:	3,919.00
Mortgage interest:	9,325.00
Contributions:	800.00
Casualty loss:	20,800.00
Net ltd. misc. deductions	11,728.00

19. Mrs. Bielinski testified that her son has multiple disabilities requiring medical therapies not covered by insurance: scoliosis, asthma, and multiple chemical sensitivities. She stated that the casualty loss resulted from a flooded basement that required extensive repairs to the foundation and walls of her home. She could not recall the basis for the miscellaneous deductions. Petitioners were given an opportunity to submit copies of bills, photographs and any other documents which would substantiate their claimed expenses. The record was left open until May 11, 2001 for submission of these documents by mail.

20. Petitioners submitted a mortgage interest statement from Cityscape Corporation (substitute form 1098) showing mortgage interest paid by petitioners in 1996 of \$9,325.00.

21. Petitioners submitted pharmacist's statements from CVS Pharmacy showing prescriptions filled for petitioners' family in 1995 and 1996. These show the actual price of each prescription and the amount paid by the customer (apparently, an insurance co-pay). The total amount paid by petitioners for these prescriptions was \$332.26.

22. Petitioners submitted several letters and receipts referencing a brace purchased for Michael Bielinski. A letter dated June 1, 1995 from the Alfred I. Dupont Institute to John Bielinski shows that the total price of the brace was \$7,801.96 which was to be paid in full by December 1995. A second letter, dated September 17, 1996, states that the "refitting appointment" would be necessary. The letter goes on to state: "The cost of this refitting and working over the brace is \$3490.78. Please bring your check or money order with you to cover

this refitting cost.” A receipt, with no name or logo preprinted on it, shows a payment of \$3,490.00 made by John Bielinski for a brace refit.

23. Petitioners also submitted a handwritten document that appears to be their own summary of medical expenses incurred. Except as noted above, there were no documents submitted in support of this summary.

24. Petitioners submitted no documents to substantiate their claimed deductions for real estate taxes, contributions, casualty losses and miscellaneous deductions totaling \$36,447.00.

25. In the course of her testimony, Mrs. Bielinski suggested that the audit of her 1996 return was undertaken as a form of harassment by a particular auditor. There is no other evidence in the record to support this contention.

CONCLUSIONS OF LAW

A. The first issue to be addressed concerns the Division's motion for summary determination based on the ground that the Division of Tax Appeals lacks subject matter jurisdiction over the petition. To obtain summary determination, the moving party must submit an affidavit, made by a person having knowledge of the facts, a copy of the pleadings and other available proof. The motion shall be granted if the documents show that there is no material issue of fact and that the facts mandate a determination in the moving party's favor (20 NYCRR 3000.9[b][1]). The Division contends that the Division of Tax Appeals lacks jurisdiction because petitioners failed to file a request for a conference or a petition for a hearing within 90 days of the issuance of a notice of deficiency as required by Tax Law § 681(b). Before this claim is addressed, I will first consider whether the Division of Tax Appeals correctly treated the petition as a claim for refund.

Certain facts are undisputed. The petition in this matter was filed on March 16, 2000. The tax was paid in full on April 17, 2000. Assuming that the tax was paid at a rate of \$355.00 per week as required by the income execution, petitioners had satisfied all but \$1,420.00 of the total liability of approximately \$7,307.48 when the petition was filed. Petitioners mailed in the Conciliation Order, and the petition was deemed perfected as of May 30, 2000. The petition was then forwarded to the Division. The Division's answer was filed on July 20, 2000. It is the Division's position, taken in the answer as well as its motion for summary determination, that before filing a petition for a hearing petitioners were required to pay the tax and then file a claim for refund of that tax with the Division. It maintains that the Division of Tax Appeals could not treat the petition itself as a claim for refund. I disagree.

Tax Law § 687(a) provides that a claim for refund or credit of income tax must be filed within three years of the time the return was filed or two years from the time the tax was paid. The Tax Appeals Tribunal has long recognized that an informal claim for refund may be recognized if the claim has a written component that adequately apprises the taxing authority that a refund is requested and the tax year in question. It must contain enough information to enable the taxing authority to begin an investigation of the matter if it so chooses and be filed within the statutory period for filing such a claim. (*Matter of Rand*, Tax Appeals Tribunal, May 10, 1990.)

In this case, petitioners filed a petition several months after the Division began income executions to satisfy an outstanding warrant. Although the petition ostensibly challenges a conciliation order, petitioners attached the income execution information to the petition, and this provided enough information to put the Division on notice of the nature of their claim. By the time the Division served an answer to the petition, the liability had been paid in full, as the answer notes. Therefore, petitioners' only remedy was to seek a refund of the tax paid. Under

these circumstances, the petition served as a timely informal claim for refund. By its answer, the Division denied that claim expressing the Division's position that the original Notice of Deficiency issued to petitioners was correct. Inasmuch as the petition was filed within two years of the date on which the tax was paid in full, the Division of Tax Appeals has jurisdiction to decide the merits of petitioners' claim.

B. The issue of whether petitioners filed a timely request for a conciliation conference or filed a timely petition for a hearing is rendered moot by the Conclusion of Law reached above. Therefore, the Division's motion for summary determination based on its claim that the Division of Tax Appeals lacks jurisdiction is denied.

C. The only remaining issue is whether petitioners have substantiated any of their claimed itemized deductions. Tax Law § 689(e) places the burden of proof on petitioners to show entitlement to the claimed deductions. With the exceptions of a payment of \$9,325.00 for mortgage interest and \$332.26 in insurance co-pays, petitioners have not shown that they actually incurred any of the itemized deductions listed on their 1996 return. Petitioners submitted no documentary evidence at all to support their deductions for real estate taxes of \$3,919.00, contributions of \$800.00, casualty losses of \$20,800.00 and miscellaneous deductions of \$11,728.00. Petitioners were not entitled to deduct New York State income taxes of \$3,048.00 from New York income (Tax Law § 615[c][1]).

The remaining item is petitioners' medical deduction of \$ 7,064.00. As noted, petitioners substantiated insurance co-pays of \$332.26. Other expenses purportedly incurred in connection with a brace for one of petitioners' children were not substantiated with convincing documentary evidence. A letter on the letterhead of Alfred I. Dupont Institute indicates that payment for the brace was to be made by December 31, 1995. Even if this payment was made, there are no facts

in evidence that would substantiate a deduction for the expense to be taken in 1996. A second letter merely states that a refitting would be necessary at a cost of \$3,490.00. The language of the letters casts some doubt on its genuineness, and the receipt offered to show payment is suspect. The receipt is similar to blank receipts which can be purchased at any stationery supply store. There are no logos or letterheads or other markings on the receipt which would lend it an air of authenticity. None of these documents is sufficient to establish actual payment. Without a canceled check or credit card receipt to show that the receipted amounts were actually paid by petitioners, I give no credence to this evidence.

Petitioners have substantiated entitlement to a mortgage interest deduction of \$9,325.00 and medical expenses of \$332.26, but they have not substantiated any other deduction. Inasmuch as the substantiated amount is less than the New York standard deduction of \$12,350.00, their 1996 deduction is correctly reduced to the standard deduction.

D. The Division's motion for summary determination is denied; petitioner's request for a refund of tax is denied; and, in all other respects, the petition is denied.

DATED: Troy, New York
October 11, 2001

/s/ Jean Corigliano
ADMINISTRATIVE LAW JUDGE